IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14044 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NEW INDIA ASSURANCE CO LTD

Versus

SANJAY DEVSHRI @ KALUBHAI BHARWAD

Appearance:

1. Special Civil Application No. 14044 of 2004

MR PV NANAVATI for Petitioner No. 1

MR VIBHUTI NANAVATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 02/02/2005

ORAL JUDGEMENT

Heard learned advocate for the petitioner, Mr P.V. Nanavati. Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the petitioner - New India Insurance Company Limited as prayed mainly for the following reliefs:-

"A" Your Lordships may be pleased to call for the R & P of Motor Accident Claim Case (MACP) No.57 of 2004 on the file of the learned Motor Accident Claims Tribunal/ Assistant Judge, Rajkot at Morbi and after perusing the same and more particularly Exh.21, Your Lordships may be pleased to quash and set aside the order passed below the said application on 3.9.2004 by appropriate writ of certiorari or writ in the nature of certiorari or any other appropriate writ or order and be further pleased to direct the learned Tribunal to take the written statement presented on behalf of the insurance company on file.

"B" Pending hearing and final disposal of this petition, your Lordships may be pleased to stay further proceedings in Motor Accident Claims Case (MACP) No.57 of 2004 on the file of the learned Motor Accident Claims Tribunal/Assistant Judge, Rajkot at Morbi."

While issuing notice of Rule, this Court has granted ad-interim relief in terms of above quoted relief "B" till the disposal of the petition.

3 According to Mr Nanavati, the other side though served has not resisted the petition by filing formal reply.

4 It is submitted that the learned Presiding Judge of the Motor Accident Claims Tribunal (Auxiliary), Morbi, on the considered Rule 220 of the Gujarat Motor Vehicle Rules, 1989 and the scheme of Chapter X of the said Rules instead of relevant provisions of Civil Procedure Code. In more than one decision, this Court and the Apex Court have stated that the MAC Tribunals deal with Motor Accident Compensation cases are not supposed to strictly follow the technicalities of the Civil Procedure Code and therefore only material procedural provisions are made by framing Rules by respective State and Gujarat State is having its own Rules. For the sake of brevity and convenience the Court would like to quote Rule 220 of the Gujarat Motor Vehicle Rules, 1989, which reads as under:-

"220. Examination of opposite Party. (1) The

opposite party may, and if so required by the Claims tribunal, shall at or before the first hearing or within such time as the as the Claims tribunal may permit, file a written statement dealing with the claim raised in the application and any such written statement shall form part of the record:

Provided that in case of an application in which the claim does not exceed Rs.10,000/= the opposite party shall, on the date mentioned in the notice sent to him, file his written statement dealing with the claim raised in the application together with the claim raised in the application together with all the documents and affidavits for the proof of those documents and of facts on which he relies in support of his defence of the application entered in a properly prepared list of documents, affidavit and shall give to the applicant copies of the written statement, documents and affidavits.

Provided further that the Claims Tribunal may not allow the opposite party to rely in support of his defence, on any documents or affidavit not filed along with the written statement, unless he satisfies the Claims Tribunal that for good or sufficient cause, he was prevented from filing such document or affidavit, as the case may be, along with his written statement.

(2) If the opposite party contests the claim, the Claims Tribunal may and if no written statement has been filed, shall proceed to examine him upon the claim and shall reduce the results of the examination in writing."

Considering the structure and phraseology of the said Rule, the opposite party is required to file written statement dealing with claim raised in the compensation petition and it is obligatory on the part of the Tribunal to take that written statement on record. The embargo emerging from the proviso of the above quoted Rule mainly touches to a case where the claim does not exceed Rs.10,000/=. Considering the other Rules of the same Chapter viz. Rules 222, 224 and 229 the Tribunal ought not to have rejected the application seeking permission to submit the written statement. In absence of a specific provision only the Code of Civil Procedure would apply to the proceedings of Tribunal. The period of limitation prescribed in the amended Civil Procedure Code

whereby it is obligatory to file the written statement within 90 days would not apply strictly to the proceedings before the MAC Tribunal. The question indirectly posed before the Court is whether a petition claiming compensation by a claimant either under Section 166 or 163A can be construed as a complaint within the meaning of the Civil Procedure Code or the reply submitted to such can be construed as a written statement strictly within the meaning of Civil Procedure Code. The word "written statement" in above referred Rule 220 is nothing but the response or response if any to the averments made in the claim petition. For short, the say of the petitioner-company requires to be accepted. The petition shall have to be allowed. The order passed by the MAC Tribunal (Aux.) at Morbi rejecting the request to take the reply on record as the same was tendered after expiry of 90 days is hereby quashed. The concerned Tribunal is directed to accept the reply of the insurance company on record and proceed with the matter further in accordance with law. Rule is made absolute in above terms.

(C.K. Buch, J.)

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